IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 269 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHADRESHBHAI AMBALAL JAISWAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 269 of 2003

MR MTM HAKIM for Petitioner No. 1

Mr S S Patel, APP for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 17/06/2003

ORAL JUDGEMENT

The present petitioner has filed this petition under Articles 226 and 227 of the Constitution of India,

challenging an order dated 1.11.2002 recorded by the Regional Transport Authority at Vadodara under section 53 of the Motor Vehicles Act, 1988 under which the registration of the vehicle involved in the petition was directed to be suspended for a period of 36 months. The case of the petitioner is that the aforesaid vehicle was seized by the second respondent and, therefore, the petitioner felt that it was an illegal seizure and, therefore, the petitioner preferred Special Criminal Petition No.747/2002. During the course of the hearing the said petition, it was noticed that the petitioner had already submitted a regular representation under section 207 (2) of the Motor Vehicles Act and the said representation was pending before the Regional Transport Officer at Vadodara. In view of the above position, this court has passed an order dated 7.10.2002 directing the said Officer to decide the said representation of the petitioner. The said petition was ordered to be disposed of accordingly. After following the procedure, the said authority had decided the said representation of the petitioner and passed order on the said representation. Feeling aggrieved by the said order of the second respondent, the petitioner has preferred this petition under Articles 226 and 227 of the Constitution of India. During the course of hearing, the learned APP Mr S S Patel has raised preliminary objection stating that the the order passed under section 53 of the said Act is appealable under section 57 of the said Act. Undisputedly, in the order it is clearly mentioned that it is an order passed in exercise of powers conferred by section 53 of the said Act. The said order has been produced by the petitioner along with the petition at page 24 at Annexure 'F'. Even in the relief clause the petitioner has prayed for a relief of quashing and setting aside the order dated 1.11.2002. This can be gathered from a bare reading of para 24(a) at page 12 of the petition.

2. It is, therefore, clear that the impugned order dated 1.11.2002 is an order passed by the appropriate authority in exercise of powers conferred on it by section 53 of the said Act. The provision contained by section 57 are very clear and are reproduced hereunder:

> "57. Appeals - (1) Any person aggrieved by an order of the registering authority under section 41,42,43,45,47,48,49,50,52,53,55 or 56 may, within thirty days of the date on which he has received notice of such order, appeal against the order to the prescribed authority.

(2) The appellate authority shall give notice of the appeal to the original authority and after giving an opportunity to the original authority and the appellant to be heard in the appeal pass such order as it thinks fit."

On a bare reading of section 57 of the Act, it becomes clear that if any person, aggrieved by an order of the registering authority under section 53, may, within 30 days of the date on which he has received notice of such order, appeal against the order to the prescribed authority. Sub-section (2) of section 57 further provides that the appellate authority, shall, give notice of the appeal to the original authority and after giving opportunity to the original authority and the appellant to be heard in the appeal pass such order as it thinks fit.

3. This shows that on the one hand there is provision for filing appeal against the order passed under section 53 of the Act. On the other hand, clear provision has been made that an appeal can be disposed of only after giving opportunity of being heard to the appellant. When statutory appeal has been provided, it is the normal practice of this court not to deal with a petition filed under Article 226 or 227 of the Constitution of India. It is required to be considered that the provisions contained in Articles 226 and 227 of the Constitution are required to be sparingly exercised. An appeal is a statutory right and it is required to be exercised in accordance with the provisions made in law. Learned advocate for the petitioners argues that the seizure is illegal and, therefore, the petition is maintainable. Now so far as the legality of the seizure is concerned, it was challenged by the aforesaid initial petition being Special Criminal Application No.747/2002. There the Court has simply directed the concerned authority to dispose of the representation of the petitioner on merit within a stipulated period. The said authority has disposed of the said representation in accordance with law and the order recorded by the said authority is again appealable. In that view of the matter, the said prayer is not required to be dealt with and considered again in this petition by this Court. It is required to be considered that right to revive the earlier petition is not reserved and right to file fresh petition is also not reserved. The said petition was partly allowed and the concerned authority was directed to decide the representation of the petitioner which has been followed by the concerned authority and the decision arrived at is appealable. This being a statutory appeal,

the petitioner is required to avail of the said opportunity and if he does not avail of the said opportunity, then it would not be open to him to come to this court by invoking extra ordinary writ jurisdiction under Articles 226 and 227 of the Constitution of India. In that view of the matter, no other point is required to be dealt with and decided. Therefore, on this preliminary aspect, the petition is required to be dismissed.

4. For the foregoing reasons, this petition is dismissed. Rule discharged.

At this stage, learned Advocate for the petitioner states that in case the petitioner desires to prefers appeal, it may be ex facie time barred but in view of the fact that the present petition was pending and, therefore, the petitioner did not file appeal, it would be appropriate if the appellate authority is directed to consider this aspect while dealing with the appeal, if any, filed by the petitioner. In case an appeal is filed by the petitioner, the appellate authority will naturally consider this aspect while dealing with the appeal provided, if the appeal is filed within 15 days from today by the petitioner.

[D P Buch, J.]
msp